THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.32880 of 1998

Date: 03.09.2007

Between:

Mohd. Abdul Sattar

... Petitioner

AND

The Registrar,
Acharya N.G. Ranga Agricultural
University, Rajendernagar,
Ranga Reddy District, Hydeabad.

... Respondents

Counsel for the petitioner : Sri M. Narasimha Rao for
Sri T. Bapuji Rao

Counsel for the respondent : Sri Nagaiah for
Sri D. Siva Reddy

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.32880 of 1998

ORDER:-

This writ petition is filed for a writ of Certiorari to set aside Memo No.7968/Ser.V.(A1)/93 dated 11.03.1998 whereby the Registrar of Acharya N.G. Ranga Agricultural University, Rajendernagar (for short "the University") rejected the request of the petitioner for paying the difference amount in respect of the surrendered leave, following the notional promotion given to the petitioner with retrospective effect after his retirement.

The petitioner retired as Storekeeper in the University on 31.08.1978. After his retirement, he was notionally promoted to the post of U.D.C/Senior Assistant with effect from 01.12.1956 and Superintendent with effect from 17.06.1968 vide proceedings dated 31.12.1992 of the Senior Scientist (P.P) and Head. In the last paragraph of the said proceedings, it is mentioned as under:

> "Since the incumbent was never officiated as U.D.C. and Superintendent and the above promotions were given from the presumptive date and from his junior's promotion date and the above pays were refixed notionally, he is not entitled to any arrears of pay and allowances from any date. He is however entitled to get his pensionary benefits refixed according to the pay refixed as above under these orders."

The petitioner made repeated representations to the respondent to pay him the difference amount of the surrendered

leave by calculating the salaries payable to U.D.C. and Superintendent as the case may be. This was rejected by the Registrar of the University vide proceedings dated 11.03.1998. The rejection is based on Fundamental Rule 26 (aa).

Sri M. Narsimha Rao, representing Sri T.Bapuji Rao, learned counsel for the petitioner submitted that since the petitioner was given retrospective promotion, he is entitled to the difference amount between the salary of a Storekeeper and the U.D.C./Senior Assistant. He also submitted that reliance on FR 26 (aa) by the respondent is not sustainable.

Sri Nagaiah representing Sri B.Siva Reddy, learned Standing Counsel for the respondent submitted that since the petitioner's promotion was only notionally given after his retirement, he is not entitled to any monetary benefit. He invited my attention to the averments in paragraph 4 of the counter-affidavit, which it is apposite to extract hereinbelow.

> "In reply to the averments made in para 3 of the affidavit, I submit that as per circular memo No.618/1785/75-2, Finance and Planning (FW.FR) Department, dated 05.02.1976 of Government of A.P., the Government servants who are allowed to encash the leave at their credit as on the date of death/superannuation, should be allowed whatever emoluments (gross payment) they would be entitled to, had they actually gone on earned/privilege leave, comprising of pay, dearness allowance, house rent allowance, C.A. etc., no deductions need be made from such payment. In view of the above, the petitioner is not entitled to get the difference of pay and allowances since the petitioner was already paid the emoluments (gross payment) he would be entitled to had he actually gone on earned leave. Since the pay fixed for the period was only notional, the petitioner would not have drawn the leave

salary on the basis of his notional pay, had he gone on leave actually."

I have carefully considered the submissions of the learned counsel.

From the reproduced portion of the proceedings dated 31.12.1992 under which the petitioner was given notional promotion, it is made very clear that he is not entitled to any arrears of pay and allowance during the period for which he never officiated as U.D.C. and Superintendent. The notional benefit of promotion is limited to the petitioner's pensionary benefits.

It is not the case of the petitioner that surrendering of leave is one of the pensionary benefits. Learned counsel for the petitioner is unable to show any rule under which a person, who is given the notional benefit, is entitled to the difference in salary in respect of the surrendered leave. The rejection of the petitioner's claim by the respondent, in my considered opinion, is based on sound reasoning and it does not suffer from any illegality warranting this Court's interference in exercise of its power of judicial review under Article 226 of the Constitution of India. The writ petition is therefore liable to be dismissed.

It is also to be noted that though the petitioner was an employee of the University, he has not made the University as a party and instead its Registrar is made a party to the writ petition. The writ petition thus suffers from fatal defect. Notwithstanding the same, even on merits, the petitioner, for the aforementioned reasons is not entitled to the relief.

The writ petition is therefore dismissed. No costs.

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C.V.NAGARJUNA REDDY, J

Date: 03.09.2007
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